

## A circular ink stamp from the Environmental Protection Agency, Region VII. The outer ring of the stamp contains the text "REGIONAL HEARING CLERK" at the top and "REGION VII" at the bottom. In the center of the stamp, the date "FEB 19 1998" is stamped, and below it, the words "Environmental Protection Agency" are written in a smaller font.

U.S. EPA Region VII  
CERCLA  
Docket No. VII-97-F-0026

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## Superfund

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

HUGÉ COMPANY, INC. SITE  
Pagedale, St. Louis County,  
Missouri.

Hugé Company, Inc.,  
Respondent.

Proceeding under Sections 104,  
106(a), 107 and 122 of the  
Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980, as amended,  
42 U.S.C. §§ 9604, 9606(a), 9607  
and 9622.

U.S. EPA Region VII  
CERCLA  
Docket No. VII-97-F-0026

ADMINISTRATIVE ORDER  
ON CONSENT FOR  
REMOVAL ACTION

I. INTRODUCTION

1. This Administrative Order on Consent for Removal Action ("Consent Order") is entered into voluntarily by Region VII of the United States Environmental Protection Agency ("EPA") and Hugé Company, Inc. ("Respondent"). This Consent Order provides for the performance of a time-critical removal action by Respondent at the Hugé Company Superfund Site ("Site") located at 7625 Page Avenue, in Pagedale, St. Louis County, Missouri. This Consent Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site, and to reimburse EPA

the response costs incurred by the United States in connection with the Site.

## II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority was delegated to the Administrator of EPA by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923 (1987), and further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D. This authority was subsequently delegated to the Director of the Superfund Division.

3. The EPA has notified the state of Missouri of this action pursuant to the requirements of CERCLA Section 106(a).

4. Respondent agrees to comply with and be bound by the terms of this Consent Order. Respondent's participation in this Consent Order shall not constitute or be construed as an admission of liability or an admission of EPA's findings or determinations contained in this Consent Order, all of which are denied and disputed and which are neither binding on nor conclusive as to the Respondent, except in a proceeding to enforce the terms of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest EPA's authority or jurisdiction to issue or to enforce this Consent Order, and agrees not to contest the basis or validity of this Consent Order or its terms.

### III. PARTIES BOUND

5. This Consent Order applies to and is binding upon EPA and upon Respondent, and upon Respondent's receivers, trustees, successors and assigns.

6. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Consent Order. Respondent shall provide a copy of this Consent Order to any subsequent owner or successor before ownership rights or stock or assets in a corporate acquisition are transferred.

7. Respondent shall provide a copy of this Consent Order to each direct contractor and consultant retained to conduct any Work performed under this Consent Order within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition all such contracts or other agreements upon satisfactory compliance with this Consent Order.

Notwithstanding the terms of any contract or other agreement, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors and other representatives comply with this Consent Order. With regard to the activities undertaken pursuant to this Consent Order, each contractor and subcontractor shall be deemed to be related by contract to Respondent within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.

§ 9607(b)(3).

#### IV. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Consent Order or in the documents attached to this Consent Order or incorporated by reference into this Consent Order, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

B. "Consent Order" shall mean this Administrative Order on Consent for Response Action and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix and any provision of any other agreement, order or writing, the terms and conditions of this Consent Order shall control.

C. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business Day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall extend until the end of the next business day.

D. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

E. "Interim Response Costs" shall mean all costs, including direct and indirect costs, incurred by EPA in connection with the Site during the period of time October 1, 1997 through the effective date of this Consent Order. Interim Response Costs shall include all such costs incurred during that time period, but not paid until after the effective date of this Consent Order.

F. "MDNR" shall mean the Missouri Department of Natural Resources.

G. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

H. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral, or an upper case letter.

I. "Parties" shall mean the EPA and the Respondent.

J. "Past Response Costs" shall mean all costs, including direct and indirect costs, that EPA incurred in connection with the Site and paid through September 30, 1997.

K. "RCRA" shall mean the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, 42 U.S.C. § 6901 et seq.

L. "Removal Action Memorandum" shall mean EPA's decision document, which selected the appropriate and necessary response action for the Site, and is attached to and incorporated by reference into this Consent Order as Appendix 2.

M. "Response and Oversight Costs" shall mean all costs that the United States incurs in connection with this Consent Order. Such costs include, but is not limited to, costs incurred in connection with reviewing or developing plans, reports and other deliverables, verifying the Work, or otherwise overseeing or enforcing this Consent Order; such costs include but are not limited to payroll costs, indirect costs, contractor costs, travel costs, laboratory costs, interagency agreement costs, and costs incurred pursuant to Section VII (Order). Response and Oversight Costs also include all Interim Response Costs and all interest on the Past Response Costs that may accrue as a result of Respondent's failure to timely pay Past Response Costs in accordance with Paragraph 41 of this Consent Order, but does not include Past Response Costs.

N. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

O. "Site" shall mean the Hugé Company, Inc. Superfund Site located at 7625 Page Avenue in Pagedale, St. Louis County, Missouri, depicted on the map which is identified as Appendix 1, attached to and incorporated by reference into this Consent Order. The Site shall also include all property and areas to which the hazardous substances, which are the subject of the removal action, have come to be located.

P. "State" shall mean the state of Missouri.

Q. "Statement of Work" or "SOW" shall mean the statement describing the Work to be implemented at the Site, as



set forth in Appendix 3, attached to and incorporated by reference into this Consent Order, and any and all substitutions, modifications or revisions made to the SOW in accordance with this Consent Order.

R. "Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

S. "Work" shall mean all activities Respondent is required to perform under this Consent Order, including any activity required to be undertaken pursuant to the terms and conditions of this Consent Order and the Statement of Work (Appendix 3), except the record retention requirements in Paragraph 33 of this Consent Order.

#### V. FINDINGS OF FACT

9. The Hugé Company, Inc. facility is located at 7625 Page Avenue in a commercial/residential area in the city of Pagedale, at the western edge of the city of St. Louis, St. Louis County, Missouri. The contamination which is the subject of this Consent Order is located in a soil pile west of and in an area north of the Hugé Company facility. The soil pile, or a portion of the soil pile, appears to be located on the Terminal Railroad Association ("TRRA") right-of-way.

10. Hugé Company, Inc. currently produces a limited amount of pesticides on-site and purchases liquid and solid insecticides

and herbicides and repackages them under the Hugé Company name. The Hugé Company is a subsidiary of TGL, Inc., a holding company, and has operated out of the Page Avenue facility since 1974. A separate pest control business, AAA Professional Pest Control, Inc. operates out of the Page Avenue facility, and is also a subsidiary of TGL, Inc. Mr. Thomas L. Hugé is the President of both the Hugé Company and TGL, Inc.

11. The Site encompasses approximately 1.5 acres which includes the facility operated by Hugé Company, Inc., and a section of right-of-way for the TRRA. Access to the Site is through commercial property operated by the Hugé Company or the TRRA right-of-way, but is otherwise unrestricted.

12. On August 22, 1994, the St. Louis Metropolitan Sewer District ("MSD") conducted an inspection at the Hugé Company facility to inspect operating conditions and confirm the location of sewer connections to MSD's system. Finding the locations of the sewer connections were required to complete Hugé Company's Industrial Wastewater Discharge Permit application. The inspection identified the location of all floor drains and the location of the sanitary hookup for the facility. The inspection report recommended that all floor drains in the Hugé Company's mixing area be sealed and a spill prevention plan be developed for the facility. Due to the lower elevation of the facility, numerous questions on how the facility's mixing area connected to the local sewer system on Page Avenue went unanswered.

13. On October 23, 1994, a maintenance crew from MCI that was laying fiber-optic cable along the railroad right-of-way behind the Hugé Company facility exposed an 8-inch clay sewer line. The sewer line was on the south side of a railroad right-of-way and appeared to run parallel with the tracks. The maintenance crew notified MSD that odors from the excavated area irritated their eyes and throats.

14. On October 24, 1994, at the request of a foreman for the MCI maintenance crew, MSD inspected the exposed sewer line discovered during the excavation from the previous day. The MSD observed that the sewer line appeared to be running full and that the water was red in color. Tom Hugé informed MSD that his company recently made a batch of red colored cleaning compound. The MSD conducted a dye test of the floor drains inside the Hugé Company facility mixing room. Within minutes, green dye was observed in the excavated trench along the railroad tracks where the sewer line was discovered. All attempts by MSD to locate where the sewer line lead failed. Later that day, an MSD maintenance crew dumped a load of water into the excavated area in order to increase the flow of water through the sewer line. The next day, green-dyed water was observed coming up out of the ground approximately 100 feet east of the excavated area. Observations of all surrounding sewer and storm water lines in the area failed to show any trace of the green dye. The excavated area was filled back in with no repairs to the sewer line. The MSD had no record of this sewer line and concluded that the line led to a leach field.

15. On November 8, 1994, MSD directed the Hugé Company to seal all floor drains in the mixing area of its facility. The MSD also requested that the company reevaluate its practice of hosing down the storage area floors on a weekly basis, and directed the company to develop a spill prevention plan for its facility.

16. On November 17, 1994, the St. Louis Regional Office ("SLRO") of MDNR conducted a Resource Conservation and Recovery Act ("RCRA") and Missouri Hazardous Waste Management Law Compliance Evaluation Inspection at the Hugé Company facility. On December 20, 1994, MDNR issued a Notice of Violation (#3781) to the Hugé Company for its failure to determine if generated solid waste was a hazardous waste, in violation of RCRA regulations at 40 C.F.R. § 262.11. The notice of violation required the Hugé Company to determine: (A) the number, size and contents of each container observed during the November 17, 1994 inspection; (B) if the materials in the containers were solid wastes as defined at 40 C.F.R. § 261.2; and (C) if the waste materials found in the containers were hazardous as defined in 40 C.F.R. § 261.3.

17. On November 23, 1994, MSD conducted a dye test in the storm inlet in front of a loading door on the south side of the Hugé Company facility building. The dye was observed coming out of the ground at the rear of the facility along the railroad tracks. Attempts to determine the location of the storm sewer connection failed.

18. On May 31, 1995, a maintenance crew of the TRRA reported encountering a potent odor while trenching behind the Hugé Company facility, and reported irritation to their eyes and throats from the fumes. Visible chemical product was observed on the water surface within the excavated trench. The TRRA stockpiled the contaminated soil from their trenching activities on-site and covered the pile with a plastic liner. A shallow drainage ditch was bermed on the east side of the area to prevent additional surface water runoff. This drainage ditch is approximately 75 feet long and contains standing water that is potentially contaminated with pesticides. The drainage ditch is still open and has begun to fill back in with sediments and vegetation.

19. On June 8, 1995, TRRA conducted a Site investigation along with GEHM Environmental and MDNR. A soil sample (apparently a grab sample) was taken from a seep along the excavated ditch from the trenching operation. Analysis of the sample indicated the presence of chlordane at 7.0 parts per million ("ppm") and 2,4,5-TP (Silvex) at 43.7 ppm. Analysis of a second four-point composite soil sample taken from the stockpile, in accordance with the Toxic Characteristic Leaching Procedure ("TCLP"), indicated the presence of chlordane at 2.8 mg/kg and 2,4,5-TP (Silvex) at 3.0 mg/kg. The TCLP regulatory level for chlordane is 0.03 mg/L and 2,4,5-TP (Silvex) is 1.0 mg/L.

20. On September 5, 1995 at the request of MDNR, TRRA performed a limited Site investigation in an attempt to locate

conduits leading into the clay tile pipe that parallels the railroad tracks. Three exploratory trenches were excavated during the investigation. The results of the investigation revealed the presence of a twelve-inch diameter, clay-tile sewer line running from the Hugé Company facility and connecting to the six-inch diameter clay-tile sewer line encountered by the TRRA maintenance crew. A very strong pesticide/herbicide odor was reportedly encountered during the excavation. At the request of MDNR, these three exploratory trenches were backfilled. The following compounds were detected during analysis of soil samples collected during the investigation: chlordane at 30.3 micrograms per kilogram (" $\mu\text{g/kg}$ ") from trench XT-3 and at 680  $\mu\text{g/kg}$  from waste sludge; and 2,4,5-TP (Silvex) at 18.6  $\mu\text{g/kg}$  from trench XT-3. Lindane, heptachlor, dieldrin, 4,4'DDD, methoxychlor, toluene, ethyl benzene and xylene were also detected, but in relatively low concentrations. These samples were collected and analyzed for the sole purpose of determining the presence or absence of pesticides/herbicide compounds.

21. The Hugé Company submitted a "one time only disposal" Hazardous Waste Generator Form 1A to MDNR on or about June 25, 1984. The form indicates the Hugé Company has used and has disposed of chlordane and sodium arsenite.

22. Following a Screening Site Investigation ("SSI") conducted by the MDNR on March 21, 1996, the MDNR issued an Integrated Assessment ("IA") Report on June 12, 1996. Sample analytical results indicate pesticide contamination (see Table 2

of Attachment 2, the Removal Action Memorandum) along the railroad right-of-way. On June 3, 1996, the Missouri Department of Health ("MDH") issued an expedited risk assessment for the Site, which was revised on November 4, 1996.

23. The major threat posed by the contamination at the Site is the potential for direct human contact and/or exposure to soils contaminated with arsenic, 2,4,5-TP (Silvex) and chlordane. Trespassers, transients, excavation workers and employees of the Hugé Company may be exposed to the contaminants via dermal contact, inhalation and possible ingestion.

24. Arsenic. Arsenic is a naturally occurring element and has been found in background sampling at a 13 ppm level. Arsenic has been detected in soil samples taken at the Site, the highest analytical result being 191 ppm from a grab sample taken north of the facility building. The major uses of arsenic are as wood preservatives and agricultural pesticides. The EPA has restricted or prohibited many of the uses of arsenic in pesticides and is considering further restrictions. Arsenic may enter the body through the routes of inhalation, ingestion or dermal contact. When taken orally, a common effect is irritation of the digestive tract, leading to pain, nausea, vomiting and diarrhea. Other effects include decreased production of red and white blood cells, abnormal heart function, blood vessel damage, liver and/or kidney injury and impaired nerve function. Arsenic ingestion has also been reported to increase the risk of internal cancer, especially in the liver, bladder, kidneys and lungs.

Arsenic is a probable human carcinogen and poses some risk to human health at any level of exposure.

25. 2,4,5-TP (Silvex). Silvex is a man-made chemical formerly used as a herbicide for the control of brush, noxious weeds and as a general purpose defoliant. Silvex was detected in one soil sample (apparently a grab sample) from a seep along a ditch, which was created during the trenching operations, at 43.7 ppm. When released on land, Silvex will exhibit strong adsorption to soils. When released on water, Silvex may be harmful to aquatic life in very low concentrations. It has been banned from use in the United States since the EPA canceled all registered uses effective January 2, 1985. Silvex may enter the body through the routes of inhalation, ingestion or dermal contact. Symptoms may include nausea, vomiting, lethargy and incoordination, and the chemical may cause eye, nose and throat irritation. Exposure may cause possible liver and kidney damage. Silvex has not been classified for human carcinogenicity.

26. Chlordane. Chlordane is a man-made chemical formerly used as a pesticide. Chlordane has been detected in soil samples taken at the Site, the highest analytical result being 48.6 ppm from a grab sample taken in an area north of the facility building. Chlordane was a widely used pesticide for the control of termites, but has been banned from use in the United States since 1988. It is not water soluble and degrades very slowly in the environment. Chlordane may enter the body through the routes of inhalation, ingestion or dermal contact and may adversely



affect the central nervous system, digestive system or liver. Chlordane is a probable human carcinogen and poses some risk to human health at any level of exposure.

27. In September 1997, EPA issued a Removal Action Memorandum wherein the Agency determined that a time-critical removal action should be performed at the Site in order to reduce the threat to human health, welfare and the environment posed by contamination at the Site. A description of the actions that need to be taken are described in the Removal Action Memorandum, attached hereto as Appendix 2.

#### VI. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting the response actions required by this Consent Order, EPA has determined that:

A. The Hugé Company Site located in Pagedale, St. Louis County, Missouri is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The contaminants found at the Site, as identified in Findings of Fact above, include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

C. Respondent is a "person" as defined by and within the meaning of Sections 101(21) and 107(a)(3) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a)(3).

D. Respondent is the operator of the facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

E. Respondent is a liable party under Sections 104, 106(a), 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622.

F. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined in Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

G. The actual or threatened release of hazardous substances at and from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

H. The actions required by this Consent Order, if properly performed under the terms of this Consent Order, are necessary to protect the public health, welfare or the environment, and are in the public interest and consistent with CERCLA and the NCP, 42 U.S.C. § 9622(a).

#### VII. ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for the Site, without adjudication or admission of any issue of fact or law, it is hereby ORDERED AND AGREED that Respondent shall comply with the following provisions, including but not limited to all documents incorporated by reference into this Consent Order, and shall perform the following actions:

29. Designation of Contractors and Subcontractors.

A. Respondent shall perform the removal action required by this Consent Order itself, or retain a qualified contractor to perform the removal action. Within twenty (20) days of the effective date of this Consent Order and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles and qualifications of its personnel, or the names, titles and qualifications of the contractor and its personnel proposed to be retained. If EPA does not disapprove of the contractor or of Respondent's choice of itself to perform the Work pursuant to Paragraph 29.C of this Section, EPA shall provide to Respondent a written notification authorizing Respondent to proceed (Authorization to Proceed).

B. Respondent shall also notify EPA of the name(s) and qualifications of any other contractor or subcontractor retained to perform Work under this Consent Order at least ten (10) working days prior to commencement of Work by such contractor or subcontractor.

C. EPA retains the right to reasonably disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent, or of Respondent's choice of itself to perform the Work under this Consent Order. If EPA disapproves of a selected contractor or subcontractor or the Respondent, EPA shall provide a written disapproval which contains EPA's reasons for the disapproval. In this event, Respondent shall propose a different contractor or subcontractor or notify EPA that it will perform

the Work itself within fourteen (14) days of receipt of EPA's written disapproval. Within twenty-one (21) days of receipt of EPA's disapproval, Respondent shall notify EPA of the names, titles and qualifications of the replacement contractor or subcontractor personnel or the names, titles and qualifications of Respondent's personnel that will conduct Work required by this Consent Order.

D. During the course of conducting the removal action, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

30. Project Coordinator and On-Scene Coordinator.

A. Within seven (7) days following receipt of EPA's Authorization to Proceed, issued pursuant to Paragraph 29.A above, Respondent shall designate a Project Coordinator who shall be responsible for administration of all Respondent's actions required by this Consent Order. Within the above-referenced seven (7) day time period, Respondent shall submit the designated coordinator's name, address, telephone number and qualifications to EPA. To the greatest extent possible, Respondent's Project Coordinator shall be present on-site or readily available during Site Work. The EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, EPA shall provide a written

disapproval which contains EPA's reasons for the disapproval. In this event, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within ten (10) days following Respondent's receipt of EPA's written notice of disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Consent Order shall constitute receipt by Respondent.

B. The EPA has designated Jim Kudlinski of the Emergency Response and Removal Branch, Superfund Division, as its On-scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Consent Order to:

Jim Kudlinski, EPA OSC  
Superfund Division  
U.S. Environmental Protection Agency, Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

C. The EPA and Respondent shall each have the right, subject to Paragraph 30.A above, to change their designated OSC or Project Coordinator. The Respondent shall notify EPA orally at least twenty-four hours before such a change is proposed to be made, to be followed immediately with written notification of such change.

D. The EPA's OSC shall have the authority lawfully vested in an On-Scene Coordinator by the NCP. In addition, EPA's OSC shall have the authority consistent with the NCP to halt any Work required by this Consent Order and to take any necessary response action when he/she determines that conditions at the

Site may present an endangerment to public health, welfare or the environment. The absence of the EPA OSC from the Site shall not be cause for the stoppage or delay of Work, unless specifically directed by the EPA OSC.

31. Work to be Performed. Respondent shall perform, at a minimum the following:

A. Removal Action Work Plan.

i. Within thirty (30) days of receipt of the Authorization to Proceed issued by EPA pursuant to Paragraph 29.A of this Consent Order, Respondent shall submit to EPA for review and approval a Removal Action Work Plan ("RAWP"), developed in accordance with the requirements of the SOW, for performing the actions selected in EPA's Removal Action Memorandum, Appendix 2. ✓

ii. The EPA may approve, disapprove and/or require revisions to a RAWP or revised RAWP. The EPA may also modify a revised RAWP or develop a RAWP if a revised RAWP cannot be approved by EPA. If EPA requires revisions, Respondent shall submit a revised RAWP within fourteen (14) days of receipt of EPA's written notification of the required revisions. Respondent shall implement the RAWP as finally approved, modified or developed by EPA in accordance with the schedule approved or established by EPA. Once approved or approved with conditions, or modified or developed by EPA, the RAWP, the schedule and any subsequent modifications to the RAWP shall be fully enforceable under this Consent Order. Respondent shall notify EPA at least five (5) business days prior to performing any on-site Work

pursuant to the RAWP that is approved, modified or developed by EPA. Respondent shall not commence or undertake any removal action at the Site without prior EPA approval.

B. Health and Safety Plan.

i. Within thirty (30) days of receipt of the Authorization to Proceed issued by EPA pursuant to Paragraph 29.A of this Consent Order, Respondent shall submit for EPA review and comment a Health and Safety Plan ("HSP") that ensures the protection of the public and worker health and safety during the performance of the Work required by this Consent Order. The HSP shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, updated July 1988. In addition, the HSP shall comply with all current Occupational Safety and Health Administration ("OSHA") requirements including, but not limited to, the regulations found at 29 C.F.R. Part 1910.

ii. Respondent shall incorporate all changes to the HSP recommended by EPA, and implement the plan during the pendency of Work conducted pursuant to this Consent Order.

C. Quality Assurance and Sampling.

i. All sampling and analyses performed pursuant to this Consent Order shall conform to EPA direction, approval and guidance regarding sampling procedures, quality assurance/quality control ("QA/QC"), data validation and chain of custody procedures. Respondent shall use quality assurance, quality control and chain of custody procedures for all samples taken and analyzed pursuant to this Consent Order in accordance

with an EPA-approved Quality Assurance Project Plan ("QAPP"). The QAPP shall be developed and meet the requirements of EPA's: "Data Quality Objective Guidance" (EPA/540/G87/003 and 004); "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations, Draft Interim Final," August 1994 (EPA QA/R-5); "EPA NEIC Policies and Procedures Manual," May 1978, revised August 1991 (EPA 330/9-78-001-R); and any subsequent amendment to such guidelines upon written notification by EPA to Respondent of such amendment. Amended guidelines shall only apply to Work conducted after such notification is received by Respondent.

ii. Respondent shall ensure that each laboratory it utilizes for the analysis of samples taken pursuant to this Consent Order performs all analysis according to accepted EPA methods. Respondent shall also ensure that each such laboratory participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and any other pertinent EPA directive and guidance. The EPA shall determine the applicability and appropriateness of any EPA guidance.

iii. Respondent shall ensure the EPA and its authorized representatives are allowed access at reasonable times



to all laboratories utilized by Respondent pursuant to the requirements of this Consent Order. Upon written request by EPA, Respondent shall have its laboratory(s) analyze samples submitted by EPA for quality-assurance monitoring. Within fourteen (14) days of receipt of a written request from EPA, Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

iv. Respondent shall notify EPA in writing not less than five (5) business days in advance of any sample collection activity or other significant field event as described in the approved RAWP. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any sample collected by Respondent, its contractor(s), or anyone acting on behalf of Respondent while Work is being performed pursuant to this Consent Order. The EPA shall have the right to take any additional samples that it deems necessary.

v. Upon written request by EPA, Respondent shall submit to EPA analytical data for samples collected in connection with this Consent Order that is in its possession. This submission of data is in addition to the reporting requirements set forth in Paragraph 31.D below, and the data shall be submitted to EPA within three (3) working days of Respondent's receipt of EPA's written request.

D. Reporting. In addition to the deliverables set forth in this Consent Order, Respondent shall submit weekly written progress reports to EPA, unless otherwise directed in writing by the EPA OSC. Progress reports shall be submitted to EPA on the Tuesday immediately following each reporting period. The first reporting period shall be the first full week after the date of receipt of EPA's approval of the RAWP. Progress reports shall continue until issuance of the Notice of Completion pursuant to Section XX of this Consent Order, unless otherwise directed in writing by the EPA OSC. At a minimum, each report shall describe all significant developments during the preceding period and shall include: (i) a description of the actions which have been taken to comply with this Consent Order; (ii) all results of sampling, tests, modeling and all other data (including raw data) generated by Respondent or on Respondent's behalf; (iii) a description of Work planned for the next two reporting periods with schedules relating such Work to the overall project schedule; and (iv) a description of all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

E. Final Removal Action Report. Within sixty (60) days after completion of all removal actions required under this Consent Order, Respondent shall submit a Final Removal Action Report to EPA for review and approval that summarizes the actions taken to comply with this Consent Order. The Final Removal

Action Report shall include a listing of quantities and types of materials removed from the Site or handled at the Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analysis performed, and accompanying appendices containing all relevant documentation generated during the removal action (i.e., manifests, permits). The Final Removal Action Report shall also include the following certification signed by the person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the Final Removal Action Report, the information submitted is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Access to Property and Information.

A. Respondent shall provide access to EPA and its authorized representatives to the Site and off-site areas to which access is necessary to conduct Work pursuant to the requirements of this Consent Order. Respondent shall also provide EPA and its authorized representatives access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Consent Order. Such access shall include providing EPA and its authorized representatives the authority to enter and freely move about all areas for the purposes of: (i) inspecting conditions,

activities, the results of activities, records, operating logs and contracts related to the Site or Respondent and its contractor; (ii) reviewing the progress of Respondent in carrying out the terms of this Consent Order; (iii) conducting tests as EPA or its authorized representatives deem necessary; (iv) using a camera, sound recording device or other documentary type equipment; and (v) verifying the data submitted to EPA by Respondent. Respondent shall allow EPA and its authorized representatives to inspect and copy all records, files, photographs, documents, sampling and monitoring data and other writings related to Work undertaken in carrying out this Consent Order. Such unrestricted access shall continue until such time as EPA has issued the Notice of Completion as set forth in Section XX of this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

B. To the extent that property to which access is required for the implementation of Work under this Consent Order is owned or controlled by persons other than Respondent, Respondent shall obtain, or use its best efforts, to obtain access agreements from such persons for itself, as well as for EPA and its representatives for the purposes set forth in Paragraph 32.A, within thirty (30) days after the effective date of this Consent Order or as otherwise directed by the EPA OSC. Copies of such access agreements shall be provided to EPA prior to Respondent's initiation of field activities. If Respondent

has not obtained such access agreements within the above-referenced thirty (30) day period, Respondent shall immediately notify EPA in writing that it has been unable to obtain such access, despite Respondent's best efforts. In the written notification, Respondent shall describe its efforts to obtain access. EPA may then assist Respondent in gaining access to the extent necessary to effectuate the Work required herein, utilizing such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs, including attorney's fees, incurred by the United States in obtaining such access for Respondent in accordance with Section IX of this Consent Order.

33. Record Retention, Documentation and Availability of Information.

A. Respondent shall preserve all documents and information relating to Work performed under this Consent Order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following issuance of the Notice of Completion by EPA pursuant to Section XX of this Consent Order. Respondent shall acquire and retain copies of all such documents and information that are in the possession of its employees, agents, accountants, contractors or attorneys. At the end of this ten (10) year period and at least ninety (90) days before any such document or information is scheduled to be destroyed, Respondent shall notify EPA in writing that such documents and information are available to EPA for inspection. Upon EPA's written request, Respondent shall provide the originals or copies of such documents and information to EPA.

B. Respondent may assert a claim of business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant this Consent Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). The EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make the information available to the public without further notice to Respondent. Analytical data and other data specified in CERCLA Section 104(e)(7)(F) shall not be claimed as confidential by Respondent.

C. Respondent may assert that certain documents or records required to be submitted to EPA pursuant to this Consent Order are privileged under the attorney-client privilege or are considered attorney-work product. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (i) the title of the document or record; (ii) the date of the document or record; (iii) the name and title of the author of the document or record; (iv) the name and title of each addressee and recipient; and (v) a description of the subject matter of the document or record. However, no document or record created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that it is privileged. Any document or record for which Respondent asserts such a privilege shall not be destroyed until

Respondent receives written notification from EPA authorizing such destruction.

D. EPA may, at any time, challenge claims of business confidentiality or privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

34. Compliance With Other Laws. Respondent shall perform all actions required under this Consent Order in accordance with all applicable local, state and Federal laws and regulations; except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all Work required pursuant to this Consent Order shall, to the extent practicable, as determined by EPA considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARS") under Federal environmental, state environmental or facility siting laws.

35. Emergency Response and Notification of Release.

A. If any incident or change in Site conditions occurs during the implementation of activities conducted pursuant to this Consent Order that causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Consent Order, including but not limited to the Health and Safety Plan, in order to prevent, abate

or minimize such releases or endangerment caused or threatened by the release. Respondent shall also immediately notify EPA's OSC or, in his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region VII (913-281-0991), of the incident or change in Site conditions. Respondent shall submit a written report to EPA within seven (7) days after each release, incident or change in Site conditions setting forth the events that occurred and the measures taken or to be taken to mitigate any release or potential release or endangerment caused or threatened by the release or potential release and to prevent the reoccurrence of such a release or potential release. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the SOW (Appendix 3), EPA reserves the right to modify or amend the SOW in writing accordingly. Respondent shall implement the SOW as modified or amended, except that Respondent shall not be required to perform additional work EPA determines is necessary that results from a change in Site conditions or an incident that is caused by actions of others.

B. The reporting requirements under this Section of the Consent Order are in addition to, not in lieu of, the reporting requirements set forth in Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11001 et seq.

#### VIII. EPA REVIEW OF SUBMISSIONS

36. With respect to all deliverables required to be submitted by Respondent pursuant to this Consent Order, EPA



reserves the right to comment on and direct changes in all deliverables, and to modify a resubmission or develop a required deliverable if the resubmission is not approved by EPA. After review of any plan, report or other deliverable which is required to be submitted for approval pursuant to this Consent Order, including resubmissions, EPA shall: (A) approve, in whole or in part, the submission; (B) approve the submission upon specified conditions; (C) disapprove, in whole or in part, the submission, directing Respondent to modify the submission; (D) modify a resubmission or develop a required deliverable in accordance with Paragraph 39, below; or (E) any combination of the above. The EPA will provide in writing the reasons for disapproval of a submission or resubmission.

37. In the event of approval or approval upon conditions by EPA pursuant to Paragraph 36(A) or (B), Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved by EPA subject only to its right to invoke the procedures set forth in Section XI (Dispute Resolution) with respect to the conditions made by EPA.

38. Notice of Disapproval.

A. Within fourteen (14) days of receipt of a Notice of Disapproval from EPA pursuant to Paragraph 36(C), or such other time as agreed upon in writing by the Parties, Respondent shall correct the deficiencies and resubmit the plan, report or other deliverable to EPA for approval. Any stipulated penalties applicable to the resubmission, as provided in Section XIII (Stipulated and Statutory Penalties), shall accrue during the 14-

day period or otherwise agreed upon period but shall not be payable unless the resubmission is disapproved or the required deliverable is modified or developed by EPA due to a material defect as provided in Paragraph 39.C.

B. Notwithstanding the receipt of a Notice of Disapproval pursuant to Paragraph 36(C), Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XIII (Stipulated and Statutory Penalties) of this Consent Order.

39. Resubmissions.

A. In the event that a resubmitted plan, report or other deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify the resubmitted plan, report or other deliverable or develop the required deliverable if the resubmission is not approved by EPA. The EPA will provide Respondent the reasons for modification or development of a plan, report or other deliverable in writing. Respondent shall implement any such plan, report or deliverable as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XI (Dispute Resolution) of this Consent Order.

B. In the event EPA modifies a resubmission to cure the deficiencies or develops the required plan, report or other

deliverable, and EPA determines that the resubmission has or had a material defect, EPA retains the right to seek penalties as provided in Section XIII (Stipulated and Statutory Penalties) of this Consent Order. Any resubmission that is modified or required deliverable that is developed by EPA shall be provided to Respondent.

C. If upon resubmission, a plan, report or other deliverable is modified or developed by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report or other deliverable in a timely and adequate manner. In this event, any stipulated penalty applicable to the resubmission shall begin to accrue from the date on which the initial resubmission was originally required. Any such stipulated penalty shall be due and payable in accordance with the provisions of Section XIII (Stipulated and Statutory Penalties), unless Respondent invokes the procedures set forth in Section XI (Dispute Resolution) herein and EPA's disapproval and modification of a resubmission or development of a required deliverable is overturned pursuant to that Section. The provisions of Paragraph 38 and Section XI (Dispute Resolution) and Section XIII (Stipulated and Statutory Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution. If EPA's disapproval and modification or development is upheld, stipulated penalties shall be paid in accordance with Section XIII (Stipulated and Statutory Penalties) of this Consent Order.

40. All plans, reports and other deliverables required to be submitted to EPA under this Consent Order shall, upon approval or modification or development by EPA, be enforceable under this Consent Order. In the event that EPA approves, modifies or develops a portion of a plan, report or other deliverable required to be submitted to EPA under this Consent Order, the approved, modified or developed portion shall be enforceable under this Consent Order.

#### IX. REIMBURSEMENT OF COSTS

##### 41. Past Response Costs.

A. Respondent shall pay the total sum of \$62,656.69 to EPA in the manner described below as reimbursement for all Past Response Costs as defined in Section IV of this Consent Order.

B. Respondent shall pay the total amount of Past Response Costs in four equal payments. The first payment shall be made by Respondent within six (6) months of the effective date of this Consent Order; the second payment shall be made by Respondent within twelve (12) months of the effective date of this Consent Order; the third payment shall be made by Respondent within eighteen (18) months of the effective date of this Consent Order; and the fourth payment shall be made by Respondent within twenty-four (24) months of the effective date of this Consent Order. ✓

C. Each payment of Past Response Costs shall be by cashier's or certified check(s) made payable to the "Hazardous Substances Superfund." Each check shall include the name of the

Site, the Site identification number ("07XB"), the account number and Docket Number of this Consent Order and shall be forwarded to:

Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
FNMG Section  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

Copies of each check, and any accompanying transmittal letter, shall be sent simultaneously to the EPA OSC.

42. Response and Oversight Costs.

A. Respondent shall reimburse the United States for all Response and Oversight Costs, as defined in Section IV of this Consent Order, incurred by the United States, its employees, agents, contractors, consultants and other authorized representatives in connection with the Site. Following the issuance of this Consent Order, EPA will submit to Respondent on a periodic basis an accounting of all Response and Oversight Costs incurred by the United States during a designated period of time. Each request for payment shall include an Itemized Cost Summary ("ICS") Report which shall serve as the basis for payment demands. Each ICS Report will include: (A) EPA's payroll costs, including the names of the persons charging time to the Site, the pay periods each employee charged time to the Site, the number of hours charged per pay period, and the payroll amounts for each employee per pay period; (B) EPA's travel costs, including the names of the persons charging travel to the Site and the date of payment of each travel claim charged to the Site; (C) contractor

and state cooperative agreement costs, including dollar amounts paid, dates paid, and invoice numbers for such payments; and (D) EPA's indirect costs, including the amount computed on the basis of direct labor hours.

B. Requests by EPA for payments of Response and Oversight Costs shall be submitted to Respondent on an annual basis following the end the Federal Fiscal Year. Failure by EPA to submit such a request for payment on an annual or other periodic basis shall not constitute or be construed as a time-bar, preventing EPA from seeking reimbursement of such costs under this Section of the Consent Order.

C. Respondent shall, within thirty (30) days of receipt of each billing from EPA for Response and Oversight Costs, remit a cashier's or certified check(s) for the amount of those costs made payable to the "Hazardous Substances Superfund." Each check shall include the name of the Site, the Site identification number ("07XB"), the account number and Docket Number of this Consent Order and shall be forwarded to:

Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
FNMG Section  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

Copies of each check, and any accompanying transmittal letter, shall be sent simultaneously to the EPA OSC.

43. Interest on Past Response Costs shall begin to accrue on the thirty-first (31st) day after each payment is due if a scheduled payment remains unpaid, at a rate established pursuant

to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and shall accrue through the date of payment. Interest on Response and Oversight Costs shall begin to accrue on the thirty-first (31st) day after the date of Respondent's receipt of a bill for such costs, at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and shall accrue through the date of payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

44. Respondent may dispute, in accordance with Section XI herein, all or part of a bill for Response and Oversight Costs submitted under this Consent Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that an action resulting in the expenditure of funds is inconsistent with the NCP. Any such dispute shall be limited to alleged accounting errors or inconsistencies with the NCP.

45. If any dispute over Response and Oversight Costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay on or before the due date: (A) the full amount of the uncontested amount into the Hazardous Substances Superfund account as specified in Paragraph 42 above; and (B) the full amount of all contested costs into an interest-bearing escrow account established by Respondent. Respondent shall simultaneously transmit a copy of each check to EPA's OSC.

Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved pursuant to Section XI of this Consent Order.

**X. ADDITIONAL WORK**

46. If EPA determines that additional response actions, not included in the approved RAWP, are necessary to protect public health, welfare or the environment, EPA will provide Respondent with a written notification of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of the written notification that additional response actions are necessary, and if such additionally required response actions are the result of conditions caused or contributed to by Respondent, as determined by EPA, Respondent shall submit to EPA for review and approval a work plan for the additional response action(s). The work plan shall conform to the applicable requirements of Section VII (Order) of this Consent Order. Upon EPA's approval of the work plan pursuant to Section VIII (EPA Review of Submissions) of this Consent Order, Respondent shall implement the work plan for additional response actions in accordance with the provisions and schedule(s) contained therein. This Section does not alter or diminish the EPA OSC's authority to make oral modifications to any plan or schedule pursuant to Section XIX (Modification) of this Consent Order.



## XI. DISPUTE RESOLUTION

47. The Parties to this Consent Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Consent Order. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order. Furthermore, only disputes for which dispute resolution has been expressly provided shall be subject to the dispute resolution procedures. Such disputes shall be resolved as described below.

A. If Respondent objects, in whole or in part, to any disapproval or decision or directive or to any billing for response costs (as allowed by Paragraph 44, herein) made by EPA pursuant to this Consent Order, Respondent shall notify EPA's OSC in writing of its objections within ten (10) days of receipt of such disapproval, decision, directive or billing for response costs. Respondent's written objections shall be sent certified mail, return receipt requested and shall define the dispute setting forth the specific points of the dispute, the basis of Respondent's objections, the position Respondent maintains should be adopted as consistent with the requirements of this Consent Order, the factual and legal basis for Respondent's position, and all matters Respondent considers necessary for resolution of the dispute. The EPA and Respondent shall then have an additional fourteen (14) days from EPA's receipt of Respondent's objections

to attempt to resolve the dispute. Any agreement reached by the Parties pursuant to this Section shall be in writing, signed by each Party, and shall upon signature of both Parties be incorporated into and become an enforceable element of this Consent Order.

B. If the Parties are unable to reach agreement within the above-referenced fourteen (14) day period, the position advanced by EPA shall be considered binding upon Respondent unless Respondent submits a written request for a Dispute Determination by EPA's Superfund Division Director or his/her designated representative within ten (10) days following the conclusion of the fourteen-day period referred to in Paragraph 47.A. Respondent's written request shall include any factual data, analysis or opinion supporting its position, and any supporting documentation relied upon by Respondent. The EPA may respond to Respondent's written request prior to the issuance of the final decision (Dispute Determination) in the disputed matter. Immediately following receipt of any such Dispute Determination, Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute regardless of whether Respondent agrees with the decision.

C. If Respondent does not agree to perform, or does not actually perform the Work in accordance with EPA's Dispute Determination, EPA reserves the right in its sole discretion to conduct the Work itself and to seek reimbursement from Respondent, to seek enforcement of the decision, to seek stipulated penalties, and to seek any other appropriate relief.

48. The existence of a dispute as defined herein and EPA's consideration of such matters as placed in dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

49. The invocation of dispute resolution does not stay the accrual of stipulated penalties or interest that may be applicable to a disputed matter under this Order, but payment shall be stayed pending resolution of the dispute. The issues of whether and in what amounts Respondent shall be liable for stipulated penalties or interest which accrued during or on account of the dispute resolution process will be resolved by the EPA Superfund Division Director or his/her designated representative in the Dispute Determination final decision.

50. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including without limitation decisions of the EPA Superfund Division Director, or his/her designated representative under this Consent Order, shall constitute final Agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the requirements of this Consent Order.

## **XII. FORCE MAJEURE**

51. For purposes of this Consent Order, a force majeure is defined as any event arising from causes entirely beyond the control of Respondent and of any entity controlled by Respondent,

including but not limited to its contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Order, notwithstanding Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event as it is occurring and following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Consent Order or the financial difficulty of Respondent to perform such Work.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA OSC or, in his/her absence, the Superfund Division Director, Region VII, within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment

to public health, welfare or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

53. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the Parties pursuant to Section XIX (Modification) for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

54. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure or does not agree with Respondent on the length of the extension, the issue shall be subject to the procedures set forth in Section XI (Dispute Resolution) of this Consent Order. In any such proceeding, to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise, or is exercising, due diligence by using its best

efforts to avoid and mitigate the effects of the delay and that Respondent complied with the requirements of Paragraph 52 above.

55. Should Respondent carry the burden set forth in Paragraph 54, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

### XIII. STIPULATED AND STATUTORY PENALTIES

56. For each day, or portion thereof, that Respondent fails to submit a deliverable in a timely manner, resubmits a deliverable that has a material defect, or otherwise fails to perform in accordance with any requirement of this Consent Order, Respondent shall be liable for stipulated penalties. Unless otherwise provided in this Consent Order, penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Where a revised submission by Respondent is required, stipulated penalties shall accrue until a satisfactory deliverable is submitted to EPA or the resubmitted deliverable is modified or developed by EPA. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

57. For a resubmitted deliverable determined by EPA to contain a material defect, the following stipulated penalties shall accrue in the amount of: (A) \$500.00 per day, per violation, for the first seven (7) days of noncompliance; (B) \$1,500.00 per day, per violation, for the eighth (8th)

through fourteenth (14th) day of noncompliance; (C) \$2,500.00 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day of noncompliance; and (D) \$4,000.00 per day, per violation, for all violations lasting beyond thirty (30) days.

58. Except for progress reports, failure to submit an original and any revised deliverable in a timely manner and failure to comply with any other provision in accordance with an EPA-approved schedule established pursuant to this Consent Order, including the SOW, the following stipulated penalties shall accrue in the amount of: (A) \$250.00 per day, per violation, for the first seven (7) days of noncompliance; (B) \$750.00 per day, per violation, for the eighth (8th) through fourteenth (14th) day of noncompliance; (C) \$1,500.00 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day of noncompliance; and (D) \$2,500.00 per day, per violation, for all violations lasting beyond thirty (30) days.

59. For each failure to submit a timely and/or adequate progress report, stipulated penalties shall accrue in the amount of: (A) \$100.00 per day, per violation, for the first seven (7) days of noncompliance; (B) \$200.00 per day, per violation, for the eighth (8th) through thirtieth (30th) day of noncompliance; and (C) \$500.00 per day, per violation, for the thirty-first (31st) and each succeeding day of noncompliance thereafter.

60. Following EPA's determination that Respondent has failed to comply with a requirement of this Consent Order, EPA will provide Respondent written notice for violations that are

not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. The EPA may send the Respondent a written demand for payment of the penalties. However, stipulated penalties shall accrue regardless of whether EPA has notified the Respondent of a violation.

61. Payment of a stipulated penalty owing under this Section shall be due within thirty (30) days of receipt by Respondent of a written demand by EPA for payment, unless Respondent invokes the procedures under Section XI (Dispute Resolution) of this Consent Order. Respondent shall pay interest on the balance of any unpaid stipulated penalty, interest beginning to accrue at the end of the above-referenced thirty (30) day period at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717.

62. All penalties shall be paid by Respondent by certified or cashier's check made payable to the Treasurer of the United States, and shall be remitted to:

Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
FNMG Section  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

All payments by Respondent shall reference the Hugé Company Facility, St. Louis, Missouri Site and identification number ("07XB"), the account number, the title and docket number of this Consent Order, and shall indicate the payment is for penalties. A copy of each check and transmittal letter shall be forwarded to the EPA OSC.



63. Respondent may dispute EPA's right to the stated amount of stipulated penalties demanded by EPA by invoking the procedures contained in Section XI (Dispute Resolution) of this Consent Order. Penalties shall accrue but need not be paid during the dispute resolution period. To the extent Respondent does not prevail upon completion of dispute resolution, the disputed stipulated penalties shall be paid to EPA within thirty (30) days of Respondent's receipt of the Dispute Determination issued pursuant to Section XI of this Consent Order.

64. If Respondent fails to pay penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. The stipulated penalty provisions set forth in this Section do not preclude EPA from pursuing any other remedy or sanction which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order including, but not limited to, EPA conducting all or part of the removal action.

65. The payment of stipulated penalties shall not alter in any way Respondent's obligations to complete performance of the Work under this Consent Order.

66. Violation of any provision of this Consent Order may subject Respondent to civil penalties of up to \$25,000 per violation, per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation,

as provided in Section 107(c)(3) of CERCLA, 42 U.S.C.

§ 9607(c)(3). Should Respondent violate this Consent Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or seek judicial enforcement of this Consent Order pursuant to CERCLA Section 106.

#### XIV. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

##### 67. Covenant Not To Sue.

A. Except as otherwise specifically provided in this Consent Order, upon issuance of the notice referred to in Section XX (Notice of Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform the removal actions agreed to in this Consent Order, except as otherwise reserved herein.

B. Except as otherwise specifically provided in this Consent Order, in consideration of and upon Respondent's payment of the response costs specified in Section IX of this Consent Order, EPA covenants not to sue or to take administrative action against Respondent under CERCLA Section 107(a) for recovery of Past Response Costs and Response and Oversight Costs incurred by EPA in connection with this removal action or this Consent Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section IX (Reimbursement of Costs) of this Consent Order.

C. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its

obligations under this Consent Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

68. EPA General Reservation of Rights. The covenants not to sue set forth above do not pertain to any matter other than those expressly specified in Paragraph 67. The EPA reserves, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following.

A. Nothing herein shall limit the power and authority of EPA or the United States to take, direct or order all actions necessary to protect public health, welfare or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from the Site.

B. Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law, including additional response actions to address threats or potential threats to human health, welfare or the environment.

C. Notwithstanding any other provision of this Consent Order, EPA reserves the right to bring an action against Respondent under CERCLA or other applicable law for recovery of

any response cost incurred by the United States in connection with the Site and not reimbursed by Respondent, including costs incurred if EPA conducts any of the Work required under this Consent Order. The EPA also reserves the right to seek recovery of any future costs incurred by the United States in connection with the Site.

D. The EPA reserves the right to bring an action against Respondent to collect stipulated penalties assessed pursuant to Section XIII (Stipulated and Statutory Penalties) of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

#### XV. OTHER CLAIMS

69. By issuing this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither the United States nor EPA shall be deemed a party or be held out as a party to any contract entered into by Respondent or Respondent's directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out activities pursuant to this Consent Order.

70. Except as expressly provided in Section XX (Notice of Completion), nothing in this Consent Order shall constitute or be construed as satisfaction of or release from any claim, cause of action, or demand in law or equity against the Respondent or any person, firm, partnership, subsidiary or corporation not a party to this Consent Order, for any liability such person may have

under CERCLA, RCRA or other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under CERCLA Sections 106(a) and 107(a).

71. This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent waives any claim to payment under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, against the United States or the Hazardous Substances Superfund arising out of any activity performed pursuant to this Consent Order. Respondent further waives all other statutory and common law claims against EPA including, but not limited to, contribution and counterclaims relating to or arising out of the implementation of the Work required under this Consent Order.

72. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

73. Respondent shall bear its own costs and attorney's fees.

#### **XVI. CONTRIBUTION PROTECTION**

74. With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Consent Order precludes the United States or the Respondent from asserting any

claims, causes of action or demands against any persons not parties to this Consent Order for indemnification, contribution or cost recovery.

#### XVII. INDEMNIFICATION

75. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent or Respondent's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out activities pursuant to this Consent Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement or arrangement between Respondent and any person for performance of Work on or relating to the Site, including but not limited to claims arising from construction delays.

76. Respondent agrees to pay the United States all costs incurred by the United States including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on the acts or omissions referred to in the preceding Paragraph.

77. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from, or on account of, any contract, agreement or arrangement between Respondent and

any person for performance of Work on or relating to the Site, including but not limited to claims on account of construction delays.

#### XVIII. INSURANCE

78. Prior to the commencement of any Work under this Consent Order, Respondent shall secure, and shall maintain for the duration of this Consent Order and for two (2) years after issuance of the Notice of Completion by EPA pursuant to Section XX, herein:

A. Comprehensive general liability ("CGL") insurance and automobile insurance with limits of \$1,000,000 combined single limit. The CGL insurance shall include contractual liability insurance in the amount of \$1,000,000 per occurrence; and

B. Pollution liability insurance in the amount of \$1,000,000 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

79. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. At least seven (7) days prior to commencing Work under this Consent Order, Respondent shall provide EPA with

certificates of the insurance required by this Section of the Consent Order, and a copy of each insurance policy if requested.

#### **XIX. MODIFICATION**

80. Modifications to any work plan or schedule may be made by the EPA OSC and Respondent's Project Coordinator. Any approved modification under this Paragraph shall be in writing, shall specify the reasons for the modification and be signed by EPA's OSC and Respondent's Project Coordinator.

81. Except as provided in Paragraph 80 above, any other modification to a provision or requirement of this Consent Order shall be accomplished by an amendment executed by the signatories to this Consent Order.

82. No informal advice, guidance, suggestion or comment by EPA regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified. Any deliverable, plan, technical memoranda, report (other than progress reports), specification, schedule and attachment required by this Consent Order are, upon approval by EPA, incorporated into this Order.

#### **XX. NOTICE OF COMPLETION**

83. Following the completion of all Work required by this Consent Order, Respondent shall notify EPA in writing and certify to the satisfaction of EPA that all activities required under



this Consent Order (including any additional Work under Section X and payment of Past Response Costs, Response and Oversight Costs and all stipulated penalties demanded by EPA) have been performed. This certification shall be signed by a responsible official representing Respondent. Respondent's official shall make the following attestation:

"I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved, the information contained in or accompanying this certification is true, accurate and complete."

For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

84. This Consent Order shall terminate when EPA determines that all Work has been fully performed in accordance with this Consent Order and that all goals and objectives of the work plans and this Consent Order have been satisfied and EPA has issued a Notice of Completion to Respondent. This notice shall not effect or terminate Respondent's obligations to comply with any continuing requirements of this Consent Order (i.e., record preservation, indemnification, insurance), or EPA's reservation of rights under Section XIV of this Consent Order.

85. If EPA determines that any Work has not been completed in accordance with the Consent Order, EPA will notify Respondent in writing, provide a list of deficiencies, and may require that Respondent develop or modify a work plan in order to address such deficiencies in accordance with the schedule contained in EPA's notice. Any required work plan or modified work plan is subject

to approval as specified in Section VIII (EPA Review of Submissions). The Respondent shall address the deficiencies and implement any approved work plan, complete the Work, and submit a modified Final Removal Action Report in accordance with the EPA notice. Failure by Respondent to implement any such approved work plan and complete the Work shall be a violation of this Consent Order.

**XXI. SEVERABILITY**

86. If any judicial or administrative authority issues an order that invalidates any provision of this Consent Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, Respondent shall remain bound to comply with all provisions of this Consent Order not invalidated or determined to be subject to a sufficient cause defense by the judicial or administrative authority's order.


**XXII. EFFECTIVE DATE**

87. This Consent Order shall become effective upon the date a fully executed copy of this Consent Order is received by Respondent.

The undersigned representative of Respondent who has signed the signature page certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to this document.

For Hugé Company, Inc.

BY:


  
Thomas L. Hugé  
President

DATE:

1.27.98

For the United States Environmental  
Protection Agency, Region VII

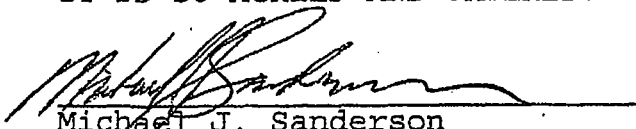
BY:

  
J. Scott Pemberton  
Senior Assistant Regional Counsel  
Office of Regional Counsel

DATE:

Feb. 3, 1998

IT IS SO AGREED AND ORDERED.

  
Michael J. Sanderson  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region VII

DATE:

Feb. 17, 1998